

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 318 of 2015

Date of Decision: 17.11.2015

Commissioner of Income Tax (Central), Gurgaon

...Appellant.

Versus

M/s Misty Meadows Pvt. Ltd., New Delhi

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Rajesh Sethi, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 19.12.2014 (Annexure-3) passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as "the Tribunal") in C.O. No. 68/JP/2012, claiming the following substantial questions of law:-

- (i) Whether, in the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the order of CIT(A) and dismissing the appeal filed by the Revenue for the

additions made on account of Unexplained share capital of Rs.1,05,00,000/- and Unexplained cash credit of Rs.14,01,765/-?

- (ii) Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law allowing the cross objection filed by the assessee?
- (iii) Whether the ITAT relied upon inadmissible evidence as the procedure adopted by CIT (A) allowing the additional evidence is against the well defined procedure engrafted in Rule 46A of the Income Tax Rules, 1962?
- (iv) Whether, in the facts and circumstances of the case, Hon'ble ITAT was legally justified in deleting the addition of Rs.1,05,00,000/- and Rs.14,01,765/- made u/s 68 of IT Act, 1961 by holding that the assessee has discharged the onus cast upon it u/s 68 of the Act while ignoring the facts that the initial evidences furnished by the assessee were duly rebutted by the Assessing Officer after making thorough enquiries and holding that the applicant companies were not in existence?
- (v) Whether ITAT has erred in law in deleting an addition under Section 68 of IT Act, 1961 by holding that insistence of the Assessing Officer asking the assessee to produce further

evidence is 'impossible compliance' whereas the Assessing Officer based on enquiries has discarded evidence already adduced by the assessee?

- (vi) Whether, in the facts and circumstances of the case, Hon'ble ITAT was legally justified in allowing relief to the assessee and deleting addition of Rs.10,00,000/- on the basis of cross objection filed by the assessee whereas the said issue was not a part of revenue's appeal and as such, no cross objection could have been filed by the assessee and the issue could have been legally decided only on appeal filed by the assessee before the Tribunal against this addition?
- (vii) Whether the findings have been recorded by ITAT on misreading and misinterpretation of facts and evidence emanating on record?
- (viii) Whether the ITAT committed grave error in arriving at such conclusions after adopting erroneous criteria and by importing such facts and circumstances which are contrary to record?

2. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. A search and seizure operation under Section 132 of the Act was conducted on 17.9.2008 in Kamdhenu Group of cases including M/s Misty Meadows Pvt. Ltd. (the assessee

herein). A notice dated 22.1.2010 under Section 153A of the Act was issued to the assessee who filed its return on 30.3.2010 for the assessment year 2003-04 declaring the total income at ₹ 1,22,320/-. Thereafter, notice dated 7.5.2010 under Sections 142(1) and 143(2) of the Act along with a questionnaire were issued to the assessee who filed reply to the same. The assessment order dated 15.12.2010 (Annexure-1) under Section 143(3) of the Act was passed by the Assistant Commissioner of Income Tax, Central Circle, Alwar assessing the income of the assessee at ₹ 3,62,00,330/-. Feeling aggrieved, the assessee filed an appeal under Section 250(6) of the Act before the Commissioner of Income Tax (Appeals), Central Jaipur [for brevity "the CIT(A)"]. The CIT(A) vide order dated 28.2.2012 (Annexure-2) partly allowed the appeal and deleted the additions of ₹ 1,05,00,000/- out of a total addition of ₹ 1,15,00,000/- on account of unexplained share capital and ₹ 14,01,765/- on account of unexplained cash credit. Against the said order, Annexure-2, the revenue filed an appeal whereas the assessee filed cross-objections before the Tribunal. The Tribunal vide order dated 19.12.2014 (Annexure-3) dismissed the appeal of the revenue and allowed the cross objections filed by the assessee. The Tribunal deleted the whole of the amount on account of unexplained share capital and ₹ 14,01,765/- on account of unexplained cash credit. Hence, the present appeal by the revenue.

3. We have heard learned counsel for the revenue.

4. The issue that arises for consideration is whether this Court would have territorial jurisdiction to decide the appeal when the Assessing Officer who passed the assessment order was based at Alwar and the first appeal was adjudicated by the CIT(A), Central Jaipur. The

second appeal was decided by the Tribunal at Jaipur.

5. The matter is no longer *res integra*. This Court in **Commissioner of Income Tax (Central) Gurgaon v. M/s Parabolic Drugs Ltd. ITA No. 49 of 2012** decided on 11.10.2012 following its earlier Division Bench judgment in **The Commissioner of Income Tax, Faridabad v. M/s Motorola India Ltd. ITA No. 44 of 2005** decided on 3.10.2007 had held that this Court had no territorial jurisdiction to decide the appeal when the order passed by the assessing authority was at Delhi. It was recorded as under:-

“8. Accordingly, the present appeal is dismissed by holding that this Court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer at New Delhi. Consequently, the appeal is returned to the Revenue for filing before the competent Court of jurisdiction in accordance with law.”

6. In view of the above, the present appeal is dismissed as this Court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer at Alwar. Consequently, the appeal is returned to the revenue for filing before the competent court of jurisdiction in accordance with law.

**(AJAY KUMAR MITTAL)
JUDGE**

November 17, 2015
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**(RAMENDRA JAIN)
JUDGE**